

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**No. 13-cv-0237 MV/SMV
11-cr-1065 MV**

ACXEL BARRERA-MUNOZ,

Defendant.

**ORDER QUASHING ORDER TO SHOW CAUSE, DIRECTING CLERK TO MAIL
CERTAIN DOCUMENTS, AND DIRECTING UNITED STATES TO ANSWER**

This matter is before the Court sua sponte under rule 4(b) of the Rules Governing Section 2255 Cases, and on Defendant's motion to vacate, set aside, or correct sentence [CV Doc. 1; CR Doc. 124] filed on March 11, 2013. Defendant filed his Motion pro se. Also before the Court is a Notice to the Court of Defendant's Address and Request to Quash Order to Show Cause [CV Doc. 8; CR Doc. 128] that Defendant's former counsel filed in the criminal proceeding. The notice was filed in response to an Order to Show Cause, [CV Doc. 7; CR Doc. 127], that was issued when mailings to Defendant in this § 2255 proceeding were returned undelivered. The notice indicates that Defendant was transferred after he filed his § 2255 Motion. The Court appreciates counsel's assistance and reminds Defendant that, if he continues to proceed pro se, he is obligated to notify the Court in writing of any change of his address. *See* D.N.M.LR-Civ 83.6. Because counsel was allowed to withdraw from representing Defendant in his direct appeal and the appeal was dismissed (CR Doc. 125), the Court considers Defendant to be proceeding pro se on his § 2255 Motion unless counsel expressly appears on his behalf.

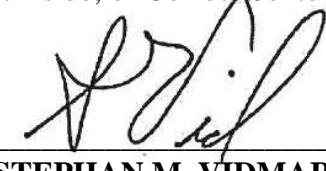
Defendant filed his § 2255 motion while his direct appeal was pending. The § 2255 motion presented no “extraordinary circumstances,” *see United States v. Prows*, 448 F.3d 1223, 1228 (10th Cir. 2006), to justify proceeding under § 2255 while the appeal was pending. Because the appeal was then dismissed on March 21, 2013, and the mandate issued on April 12, 2013, [CR Doc. 125], the Court will direct the United States to answer Defendant’s motion.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Order to Show Cause [CV Doc. 7; CR Doc. 127] is **QUASHED**; and the Clerk is **DIRECTED** to add Defendant’s current address to the criminal docket and to send [CV Docs. 3, 4, 7, and 8] to Defendant at his current address;

IT IS FURTHER ORDERED that the Clerk is directed to **FORWARD** to the United States of America a copy of Defendant’s Motion to Vacate, Set Aside, or Correct Sentence [CV Doc. 1; CR Doc. 124] and supporting papers and exhibits, if any, together with a copy of this Order;

IT IS FURTHER ORDERED that, within 23 days of entry of this Order, the United States **ANSWER** Defendant’s Motion to Vacate, Set Aside, or Correct Sentence.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge